IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 331 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H D HIGH SCHOOL, THRO' ITS PRINCIPAL LAXMANDAS DAMJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AMAR D MITHANI for Petitioner

MR BY MANKAD, APP for Respondent No. 1

MR ASHISH M DAGLI for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 26/09/2001

ORAL JUDGEMENT

1. This is a Revision Application filed by the original complainant being aggrieved and dissatisfied by the order passed by the learned Judicial Magistrate, First Class, Una, on 22nd December, 1999, acquitting the respondent No.2 accused in Criminal Case No. 279 of 1993 for the charges under Sections 465 and 467 of the Indian

Penal Code.

2. Learned Advocate for the applicant Mr. Amar D. Mithani was heard at length. Learned Advocate Mr. Ashish M. Dagli for respondent No.2 and learned APP Mr. B.Y. Mankad for respondent No.1 - State of Gujarat, were also heard.

3. As per the brief facts of the case, it was alleged against the accused that somewhere in 13th August, 1992 while the accused was serving in the High School of the petitioner, took out blank forms of the School Leaving Certificates from the book kept in the School. After misusing these blank forms of School Leaving Certificate and having forged the same, gave xerox copy of such forged School Leaving Certificate to a student. The fact came to the knowledge when a student approached with the xerox copy, for the certified copy before the Principal. On 13th August, 1992 one Clerk Dineshbhai Rajyguru complained before the Principal that last four blank forms from the book of School Leaving Certificate were lost and that book was kept in the cupboard, key of which was with Mr.Dineshbhai Rajyguru. On 8th September, 1992, one Bahmaniya Parshottam Jiva came to Dineshbhai for the certification of true copy of the School Leaving Certificate, wherein he produced the xerox copy alleged to have been forged from the lost forms of the School Leaving Certificate from the School. It was found that the said xerox copy of the School Leaving Certificate was forged. It is mentioned in the complaint that the said Bahmaniya Parshottam Jiva explained that the said xerox copy was obtained from the accused who was serving as a Clerk at the relevant point of time in the said High School. Dineshbhai Rajyguru affixed a stamp of true copy on the xerox copy of the School Leaving Certificate. The school belongs to Trust and, therefore, the Trustees were consulted and the complaint was filed by the Principal of the School on 1st August, 1989. It is also mentioned in the complaint that the accused in company of one other Head Clerk Bhailalbhai N. Gadhiya visited the Principal on 27th October, 1982 and on inquiry the Head Clerk Bhailalbhai N. Gadhiya said that the accused had admitted his mistake and said that he had forged the School Leaving Certificate. The accused was dealt with departmentally.

4. During the trial vide Exh.30 Principal Laxmandas

Damjibhai was examined, vide Exh. 37 Bhailal Nagardas Gadhiya was examined, vide Exh. 38 Dineshbhai Rajyguru was examined, vide Exh.39, Dhirajlal Shivshankar and vide Exh. 40 Mahebubali Alibhai was examined.

5. Learned Advocate Mr. Mithani on behalf of the petitioner vehemently urges that the xerox copy which was collected as an evidence by the Investigating Officer was not allowed to be exhibited by the Trial Court and, therefore, there was miscarriage of justice. It was further urged that the Principal vide his deposition Exh. 30 has stated that the hand writings in the xerox copy were of the accused. It was urged that in these circumstances, this Court is required to interfere in the order of acquittal passed by the Trial Court because the same is perverse. The Trial Court ought to have allowed the secondary evidence i.e. the xerox copy of the School Leaving Certificate to be exhibited and the same to be believed to have been in the hand writing of the accused. Learned Advocate Mr. Mithani has placed reliance on some decision, which shows that when the order is perverse, against the evidence on record, the High Court is empowered under Section 401 of the Cr.P.C. to interfere with the order of acquittal and non-filing of an Appeal by the State against the acquittal, would not be a bar for the High Court to interfere in the order of acquittal.

6. From the record it clearly appears that the case against the accused was, he obtained clandestinely the forms of School Leaving Certificate from the book which is kept in the cupboard of the school in the lock and key. It is the case against the accused that he forged and misused those forms and a xerox copy was given to some other person and one of them Parshottam Jiva came to the school for the certified true copy of the School Leaving Certificate and this forgery came to light.

7. On appreciation of evidence, it is clear that there is no evidence to come to the conclusion that any time the said book containing the Forms of School Leaving Certificate were in the custody of the accused. On the contrary, it was in the custody of Dineshbhai Rajyguru, Clerk of the School, who was examined vide Exh. 38 and according to his deposition, the same was kept in lock and key. The student who brought the xerox copy of the School Leaving Certificate in the school for the true copy has not been examined by the Police nor there is any iota of evidence which connects the accused with the said xerox copy of the School Leaving Certificate, alleged to have been forged by the accused. There is no evidence at

all that said xerox copy was found from the possession of the accused. Only because the Principal says that the hand writings in the xerox copy were of the accused would not book the accused for the conviction particularly when the prosecution has failed to obtain the original School Leaving Certificate and produce the same before the Court. I cannot agree with the argument advanced on behalf of the petitioner that the Trial Court ought to have exhibited and admitted the xerox copy in the evidence. It is an established law that secondary evidence is admissible only when it is established that the primary evidence is lost. This is not the case herein. We may say that the prosecution has failed to produce the original and stolen School Leaving Certificate or to connect the accused with the original School Leaving Certificate and in the circumstances the learned Trial Judge was right in not admitting the xerox copy on record being secondary evidence which was other wise not permissible under the Evidence Act. It is the case of the prosecution that the accused made an extra judicial confession before witness Bhailal Nagardas Gadhiya, but fact stands that the witness Exh. 37 Bhailal Nagardas Gadhiya did not said in his evidence that accused made extra judicial confession before him. In these circumstances, the order of acquittal requires no interference exercising the power of this Court under Section 401 of the Cr.P.C. merely because the Principal has given in evidence that the writings in the xerox copy of the School Leaving Certificate were of the accused or that the Trial Court refused to admit the xerox copy of the School Leaving Certificate in evidence, no interference is required in the order of acquittal. It is an established law that interference in the order of acquittal would be in very exceptional cases when the order of Trial Court is suffering from glaring illegality or has caused miscarriage of justice or there was any jurisdictional error or where the Trial Court did not consider the evidence on record or ignored the clinching evidence. Here in this case, the prosecution has failed to prove the link between the accused with the said xerox copy of the School Leaving Certificate alleged to have been forged by the accused. Even if the xerox copy of the School Leaving Certificate is admitted to the evidence, since the link between this and accused is not established by the prosecution, the same would not have made any difference so far as the order of acquittal is concerned.

8. In this view of the matter, this Revision Application stands dismissed summarily. Rule is discharged.

(J.R. Vora, J.)

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